

MINUTES
BERRYVILLE TOWN COUNCIL
Berryville-Clarke County Government Center
Regular Meeting
November 8, 2016
7:30 p.m.

Town Council: Present-Patricia Dickinson, Mayor; Harry Lee Arnold, Jr., Recorder; Donna Marie McDonald; Allen Kitselman; Erecka Gibson; David Tollett

Staff: Keith Dalton, Town Manager; Christy Dunkle, Assistant Town Manager/Planner; Desiree Moreland, Assistant Town Manager/Finance; Neal White, Chief of Police; Ann Phillips, Town Clerk

Press: Cathy Kuehner

1. Call to Order

Mayor Dickinson called the meeting to order at 7:30 p.m.

2. Pledge of Allegiance

3. Approval of Agenda

The agenda was approved on a motion by Council member Gibson, seconded by Council member McDonald, with the addition of one agenda item.

4. Approval of Minutes

The minutes of the Town Council meeting on October 11, the Town Council – Board of Supervisors joint meeting on October 18, and the Town Council work session on October 31, 2016, were approved as presented by consent.

5. Citizens' Forum

The speakers were as follows:

George Archibald, Main Street, Berryville, who read from a prepared statement and asked that the Council defer action on the cable franchise agreement until the County completes its telecommunications study.

Sue Ross, Executive Director of Berryville Main Street, who highlighted the recent activities in downtown. She noted the holiday parking meter contest will be starting soon, and the tree lighting ceremony scheduled for December 2.

Alton Echols, Custer Court, Berryville, who read from a prepared statement regarding senior housing facilities and assured the Council that the proffers on his senior housing project will be paid.

Brian McClemens, Fairfax Street, who said the Mayor had permitted two of the previous citizens to speak longer than dictated by the rules. He said he was disappointed that the Council had overturned the decision regarding the senior housing project which had been recommended by the Planning Commission.

6. Report of Patricia Dickinson, Mayor

The Mayor noted the Veterans Day ceremony scheduled for November 11, 2016.

The Mayor and the Council discussed the Comcast cable television franchise agreement. Council member Kitselman moved that the Council of the Town of Berryville authorize the Town Manager to sign the attached Comcast franchise agreement and to make minor alterations as recommended by legal counsel in conjunction with the County of Clarke. Recorder Arnold seconded the motion which carried as follows:

Aye: McDonald, Kitselman, Gibson, Tollett, Arnold, Dickinson

Nay: None

Absent, Abstain: None

(Franchise Agreement begins on the following page.)

Final draft 6/20/2016

**CABLE TELEVISION FRANCHISE AGREEMENT BETWEEN COMCAST and THE
TOWN OF BERRYVILLE, VIRGINIA**

This Franchise Agreement (hereinafter, the "Agreement" or "Franchise Agreement") is made between the Town of Berryville, a political subdivision of the Commonwealth of Virginia (hereinafter, "Town") and Comcast of California/Maryland/Pennsylvania/Virginia/West Virginia, LLC (hereinafter, "Grantee").

The Town, having determined that the financial, legal, and technical ability of the Grantee is reasonably sufficient to provide the services, facilities, and equipment necessary to meet the future cable-related needs of the community, desires to enter into this Franchise Agreement with the Grantee for the construction, operation and maintenance of a Cable System on the terms and conditions set forth herein.

SECTION 1 - Definition of Terms

For the purpose of this Franchise Agreement, capitalized terms, phrases, words, and abbreviations shall have the meanings ascribed to them in the Code of Virginia, Article 1.2, § 15.2-2108.19, and the Cable Communications Policy Act of 1984, as amended from time to time, 47 U.S.C. §§ 521 et seq. (the "Cable Act"), unless otherwise defined herein.

1.1 "Access Channel" means a video Channel, which Grantee shall make available to the Town without charge for non-commercial public, educational, or governmental access use for the transmission of video programming as directed by the Town.

1.2 "Act" means the Communications Act of 1934.

1.3 "Affiliate", in relation to any Person, means another Person who owns or controls, is owned or controlled by, or is under common ownership or control with, such Person.

1.4 "Basic service tier" means the service tier that includes (i) the retransmission of local television broadcast channels and (ii) public, educational, and governmental access channels required to be carried on the basic tier.

1.5 "Cable Operator" means any Person or group of Persons that (A) provides Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in such Cable System or (B) otherwise controls or is responsible for, through any arrangement, the management and operation of a Cable System.

1.6 "Cable Service" means the one-way transmission to Subscribers of (i) video programming or (ii) other programming service, and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

1.7 "Cable System" or "System" means any facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide Cable Service that includes video programming and that is provided to multiple Subscribers within a community, except that such definition shall not include (i) a system that serves fewer than 20 Subscribers; (ii) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (iii) a facility that serves only Subscribers without using any public right-of-way; (iv) a facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, 47 USC § 201 et seq., except that such facility shall be considered a Cable System to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (v) any facilities of any electric utility used solely for operating its electric systems; (vi) or any portion of a System that serves fewer than 50 Subscribers in any locality, where such portion is part of a larger System franchised in an adjacent locality; or (vii) an open video system that complies with § 653 of Title VI of the Communications Act of 1934, as amended, 47 U.S.C. § 573.

1.8 "Channel" shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(4).

1.9 "Communications Act" means the Communications Act of 1934, as amended.

1.10 "Control" means the ability to exercise *de facto* or *de jure* control over day-to-day policies and operations or the management of corporate affairs.

1.11 "Educational Access Channel" means an Access Channel available for the use of the Clarke County Public Schools.

1.12 "Effective Date" means June 30, 2015.

Commented [A1]: Revise.

1.13 "FCC" means the Federal Communications Commission or successor governmental entity thereto.

1.14 "Force majeure" means an event or events reasonably beyond the ability of Grantee to anticipate and control. "Force majeure" includes, but is not limited to, acts of God, incidences of terrorism, war or riots, labor strikes or civil disturbances, floods, earthquakes, fire, explosions, epidemics, hurricanes, tornadoes, environmental restrictions, governmental actions and restrictions, work delays caused by waiting for utility providers to service or monitor or provide access to utility poles to which Grantee's facilities are attached or to be attached or conduits in which Grantee's facilities are located or to be located, and unavailability of materials or qualified labor to perform the work necessary.

1.15 "Franchise" means the initial authorization, or renewal thereof, issued by the Town, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, ordinance, resolution or otherwise, which authorizes the construction and operation of the Cable System.

1.16 "Franchise Agreement" or "Agreement" means this Cable Franchise Agreement and any amendments or modifications hereto.

1.17 "Franchise Area" means the present legal boundaries of the Town of Berryville as of the Effective Date, and shall also include any additions thereto, by annexation or other legal means.

1.18 "Government Channel" means an Access Channel dedicated to carriage of programming related to the government of Clarke County, the Town, and any other municipality located within Clarke County.

1.19 "Grantee" means Comcast of California/Maryland/Pennsylvania/Virginia/West Virginia, LLC.

1.20 "Gross Revenue" means all amounts which are received by Grantee from the operation of the Cable System to provide Cable Service in the Franchise Area. The Grantee shall maintain its books in accordance with generally accepted accounting principles ("GAAP"). Gross Revenue shall include, without limitation, the following:

1.20.1 Any revenue received from Subscribers, including but not limited to revenue for basic service, expanded basic service, other tier services, additional outlets, and pay-per-view service, or for the distribution of any other Cable Service, as defined by federal law, over the System;

1.20.2 Revenue received from Subscribers for installation, change in service and reconnection charges and similar fees attributable to the provision of Cable Services;

1.20.3 Revenue received from Subscribers for converters, remote controls or other equipment leased or rented to Subscribers in connection with the delivery of Cable Services to such Subscribers;

1.20.4 Revenue received from Subscribers for service charges and late fees related to delinquent accounts as attributable to the provision of Cable Services;

1.20.5 Revenue received from third parties, including advertising revenue, home shopping commissions, leased access payments (except as limited herein). In computing Gross Revenue from sources other than Grantee's Subscribers, including without limitation, revenue derived from the sale of advertising, home shopping services, guide sales, the lease of channel capacity on its Cable System, or any other such revenues derived from the operation of the Cable System to provide Cable Service, the amount of such revenues attributable or allocated to Grantee shall be in accordance with GAAP.

1.20.6 Fees collected from Subscribers for the payment of cable franchise fees to be paid to the Town; such cable franchise fees shall not be deemed to be taxes and are not deducted from the total gross revenue figure on which Franchise fees are paid.

Provided, however, that Gross Revenue shall not include: (i) refunds or rebates made to Subscribers or other third parties; (ii) any revenue which is received from the sale of merchandise over home shopping channels carried on the Cable System, but not including revenue received from home shopping channels for the use of the Cable Service to sell merchandise; (iii) any tax, fee, or charge collected by the Cable Operator and remitted to a governmental entity or its agent or designee, including without limitation a local public access or education group; (iv) program launch fees; (v) directory or advertising revenue including, but not limited to, yellow page, white page, banner advertisement, and electronic publishing; (vi) a sale of Cable Service for resale or for use as a component part of or for the integration into Cable Services to be resold in the ordinary course of business, when the reseller is required to pay or collect franchise fees or similar fees on the resale of the Cable Service; (vii) revenues received by any Affiliate or any other person in exchange for supplying goods or services used by the Cable Operator to provide Cable Service; and (viii) revenue derived from services classified as non-Cable Services under federal law, including, without limitation, revenue derived from Telecommunications Services and Information Services, and any other revenues attributed by the Cable Operator to non-Cable Services in accordance with rules, regulations, standards, or orders of the Federal Communications Commission.

1.21 "Information Services" shall be defined herein as it is defined under Section 3 of the Communications Act, 47 U.S.C. §153(20).

1.22 "Institutional Network" or "I-Net" means the fiber optic cable and related facilities constructed for Clarke County by Adelphia Cable LLC, the Grantee's predecessor-in-interest, and any additional such facilities constructed at the County's direction.

1.23 "Internet Access" means dial-up or broadband access service that enables Subscribers to access the Internet.

1.24 "Non-Cable Services" means any service that does not constitute the provision of Video Programming directly to multiple Subscribers in the Franchise Area including, but not limited to, Information Services, Internet Access, and Telecommunications Services.

1.25 "Normal Business Hours" means those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal businesses hours" must include some evening hours at least one night per week and/or some weekend hours.

1.26 "Normal Operating Conditions" means those service conditions which are within the control of the Grantee. Those conditions which are not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are within the control of the Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or rebuild of the Cable System. See 47 C.F.R. § 76.309(c)(4)(ii).

1.27 "PEG" means public, educational, and governmental.

1.28 "Person" means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the Town.

1.29 "Public Rights-of-Way" means the surface, the air space above the surface, and the area below the surface of any public street, road, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, parkway, waterway, easement, or similar property in which the Town now or hereafter holds any property interest, which, consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining, a Cable System. No reference herein to the "Public Rights-of-Way" shall be deemed to be a representation or guarantee by the Town that its interest or other right of control to use such property is sufficient to permit its use for such purposes, and the Grantee shall be deemed to gain only those rights to use as are properly in the Town and as the Town may have the undisputed right and power to give.

1.30 "Service Interruption" means the loss of picture or sound on one or more cable channels.

1.31 "Subscriber" means a Person who lawfully receives Cable Service delivered over the Cable System with Grantee's express permission.

1.32 "Telecommunication Services" shall be defined herein as it is defined under Section 3 of the Communications Act, 47 U.S.C. § 153(46).

1.33 "Title VI" means Title VI of the Communications Act.

1.34 "Town" means the Town of Berryville, organized and existing under the laws of the Commonwealth of Virginia, and the area within its territorial limits.

1.35 "Transfer" means any transaction in which (i) an ownership or other interest in the Grantee is transferred, directly or indirectly, from one Person or group of Persons to another Person or group of Persons, so that majority control of the Grantee is transferred; or (ii) the rights and obligations held by the Grantee under the Franchise granted under this Franchise Agreement are transferred or assigned to another Person or group of Persons. However, notwithstanding clauses (i) and (ii) of the preceding sentence, a transfer of the Franchise shall not include (a) transfer of an ownership or other interest in the Grantee to the parent of the Grantee or to another Affiliate of the Grantee; (b) transfer of an interest in the Franchise granted under this Franchise Agreement or the rights held by the Grantee under the Franchise granted under this Franchise Agreement to the parent of the Grantee or to another Affiliate of the Grantee; (c) any action that is the result of a merger of the parent of the Grantee; (d) any action that is the result of a merger of another Affiliate of the Grantee; or (e) a transfer in trust, by mortgage, or by assignment of any rights, title, or interest of the Grantee in the Franchise or the System used to provide Cable Service in order to secure indebtedness.

1.36 "Video programming" means programming provided by, or generally considered comparable to, programming provided by a television broadcast station.

SECTION 2 - Grant of Authority

2.1 Grant. The Town hereby grants to the Grantee under the Code of Virginia and the Cable Act a nonexclusive Franchise authorizing the Grantee to construct and operate a Cable System in the Public Rights-of-Ways within the Franchise Area for the purpose of providing Cable Service, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in any Public Rights-of-Way such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System. No privilege or power of eminent domain is bestowed by this grant; nor is such a privilege or power bestowed by this Agreement.

2.2 Term of Franchise. The term of the Franchise granted hereunder shall be fifteen (15) years, commencing upon the Effective Date of the Franchise, unless the Franchise is renewed or is lawfully terminated.

2.3 Renewal. Any renewal of this Franchise shall be governed by and comply with Section 626 of the Cable Act, as amended.

2.4 Reservation of Authority. Nothing in this Franchise Agreement shall be construed as a waiver of any codes or ordinances of general applicability promulgated by the Town.

2.5 Grant Not Exclusive. The Franchise and the right it grants to use and occupy the Public Rights-of-Way to provide Cable Services shall not be exclusive, and the Town reserves the right to grant other franchises for similar uses or for other uses of the Public Rights-of-Way, or any portions thereof, to any Person, or to make any such use themselves, at any time during the term of this Franchise Agreement.

2.6 Police Powers. Nothing in the Franchise Agreement shall be construed to prohibit the reasonable, necessary and lawful exercise of the Town's police powers. However, if the reasonable, necessary and lawful exercise of the Town's police power results in any material alteration of the terms and conditions of this Franchise, then the parties shall modify this Franchise Agreement to the mutual satisfaction of both parties to ameliorate the negative effects on the Grantee of the material alteration.

2.7 Competitive Equity. The Grantee acknowledges and agrees that the Franchising Authority reserves the right to grant one or more additional franchises to provide Cable Service within the Franchise Area; the Franchising Authority acknowledges and agrees that the franchise agreement shall be governed by §15.2-2108.26 of the Code of Virginia.

SECTION 3 - Construction and Maintenance of the Cable System

3.1 Permits and General Obligations. The Grantee shall be responsible for obtaining, at its own cost and expense, all generally applicable permits, licenses, or other forms of approval

or authorization necessary to construct, operate, maintain or repair the Cable System, or any part thereof, prior to the commencement of any such activity. Construction, installation, and maintenance of the Cable System shall be performed in a safe, thorough and reliable manner using materials of good and durable quality. All transmission and distribution structures, poles, other lines, and equipment installed by the Grantee for use in the Cable System in accordance with the terms and conditions of this Franchise Agreement shall be located so as to minimize the interference with the proper use of the Public Rights-of-Ways and the rights and reasonable convenience of property owners who own property that adjoins any such Public Rights-of-Way.

3.2 Conditions of Street Occupancy.

3.2.1 New Grades or Lines. If the grades or lines of any Public Rights-of-Way within the Franchise Area are lawfully changed at any time during the term of this Franchise Agreement, then the Grantee shall, upon reasonable advance written notice from the Town (which shall not be less than ten (10) business days) and at its own cost and expense, protect or promptly alter or relocate the Cable System, or any part thereof, so as to conform with any such new grades or lines.

3.2.2 Relocation at Request of Third Party. The Grantee shall, upon reasonable prior written request of any Person holding a permit issued by the Town to move any structure, temporarily move its wires to permit the moving of such structure; provided (i) the Grantee may impose a reasonable charge on any Person for the movement of its wires, and such charge may be required to be paid in advance of the movement of its wires; and (ii) the Grantee is given not less than ten (10) business days advance written notice to arrange for such temporary relocation.

3.2.3 Restoration of Public Rights-of-Ways. If in connection with the construction, operation, maintenance, or repair of the Cable System, the Grantee disturbs, alters, or damages any Public Rights-of-Way, the Grantee agrees that it shall at its own cost and expense replace and restore any such Public Rights-of-Way to a condition reasonably comparable to the condition of the Public Rights-of-Way existing immediately prior to the disturbance.

3.2.4 Safety Requirements. The Grantee shall, at its own cost and expense, undertake all necessary and appropriate efforts to maintain its work sites in a safe manner in order to prevent failures and accidents that may cause damage, injuries or nuisances. All work undertaken on the Cable System shall be performed in substantial accordance with applicable FCC or other federal and state regulations and applicable safety codes. The Cable System shall not unreasonably endanger or interfere with the safety of Persons or property in the Franchise Area.

3.2.5 Trimming of Trees and Shrubbery. The Grantee shall have the authority to trim trees or other natural growth overhanging any of its Cable System in the Franchise Area so as to prevent contact with the Grantee's wires, cables, or other equipment. All such trimming shall be done at the Grantee's sole cost and expense. The Grantee shall be responsible for any damage caused by such trimming.

3.2.6 Aerial and Underground Construction. At the time of any Cable System construction, if all of the transmission and distribution facilities of all of the respective public or municipal utilities in the portion of the Franchise Area in which construction is being performed are underground, the Grantee shall place its Cable System's transmission and distribution facilities underground; provided that such underground locations are actually capable of accommodating the Grantee's cable and other equipment without technical degradation of the Cable System's signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the Grantee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. Nothing in this Section shall be construed to require the Grantee to construct, operate, or maintain underground any ground-mounted appurtenances such as Subscriber taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment.

3.2.7 Undergrounding and Beautification Projects. In the event all users of the Public Rights-of-Way relocate aerial facilities underground as part of an undergrounding or neighborhood beautification project, Grantee shall participate in the planning for relocation of its aerial facilities contemporaneously with other utilities.

SECTION 4 - Service Obligations

4.1 General Service Obligation.

4.1.1 The Grantee shall make Cable Service available to every residential dwelling unit within the Franchise Area where the minimum density is at least thirty (30) dwelling units per mile and is within one (1) mile as measured in strand footage from the nearest point on the Cable System trunk or feeder line from which a usable cable signal can be obtained. For purposes of this section, a home shall be counted as a "dwelling unit" if, and only if, such home is located within four hundred (400) feet of the public right of way. Subject to the density requirement, Grantee shall offer Cable Service to all new homes or previously unserved homes located within two hundred (200) feet of the Grantee's distribution cable at the standard installation rate. Should, through new construction, an area within the Franchise Area meet the density requirements, Franchisee shall provide Cable Service to such area within one (1) year after it confirms that the density requirements have been met following notice from the Franchising Authority that one or more residents has requested service.

4.1.2 The Grantee may impose an additional charge in excess of its regular installation charge, but not in excess of its actual cost which may include cost of material, labor, design and any necessary easements, for any service installation at a location that is more than two hundred (200) feet from the Public Rights-of-Way. Such additional charge shall be paid by the developer, home owners association, landowner or Subscriber requesting Cable Service in an area that does not meet the density and distance standards.

4.2 New Developments. The Grantee agrees to use commercially reasonable efforts to inform itself of all newly planned developments within the Town and to work with developers to cooperate in pre-installation of facilities to support Cable Service.

4.3 Programming. The Grantee shall offer to all Subscribers a diversity of video programming services.

4.4 No Discrimination. The Grantee shall not discriminate or permit discrimination between or among any Persons in the availability of Cable Services or other services provided in connection with the Cable System in the Franchise Area. It shall be the right of all Persons to receive all available services provided on the Cable System so long as such Person's financial or other obligations to the Grantee are satisfied; provided, however, that the Grantee may deny service for good cause, including but not limited to theft of Grantee's services, vandalism of its property, or abuse or harassment of its representatives. Nothing contained herein shall prohibit the Grantee from offering bulk discounts, promotional discounts, package discounts, or other such pricing strategies as part of its business practice. Grantee shall assure that access to Cable Services is not denied to any group of potential residential cable Subscribers because of the income of the residents of the local area in which such group resides.

4.5 Provision of Maps to the Town. The Grantee shall provide the Town, upon written request and no more than once per calendar year an up-to-date strand map of its facilities in the Franchise Area. The Town shall treat such maps as proprietary information, exempt from release or disclosure under the Virginia Freedom of Information Act, and shall use the maps only for purposes of planning and managing construction within and in the immediate vicinity of the public rights-of-way.

4.6. Additional Maps. Should the Town request access to more detailed maps of the Cable System, then the Grantee shall permit the Town to review such maps at a specified location in northern Virginia.

4.7 Removal and Relocation. In accordance with applicable law, the Town shall have the power at any time to order and require the Grantee to remove or relocate any pole, wire, cable or other structure owned by the Grantee that is dangerous to life or property. In the event that the Grantee, after notice, fails or refuses to act within a reasonable time, the Town shall have the power to remove or relocate the same at the sole cost and expense of the Grantee, which cost shall be summarized by the Town.

SECTION 5 - PEG Services

5.1 PEG Channels.

5.1.1 In order to ensure availability of PEG programming, Grantee shall make available up to two (2) Access Channels on the Basic Service Tier, upon request of the Town. One Access Channel shall be designated as the Educational Access Channel, and the other shall be designated as the Government Access Channel (jointly, "PEG Channels"). The Town may request that Grantee make either or both PEG Channels available at any time by submitting a

request in writing, and Grantee shall make the Channel or Channels available within nine (9) months of the date of the request.

5.1.2 The PEG Channels shall be carried on the channel numbers to be assigned by Comcast at the time they are made available. Thereafter, PEG Channel assignments may be changed and the entity responsible for managing any affected PEG Channel shall be given thirty (30) days advance notice of the change. If the Grantee decides to change the channel designation for any of the PEG Channels, it must provide thirty (30) days prior written notice to the Town, and shall reimburse the Town, and/or the designated PEG provider in an amount not to exceed one thousand dollars (\$1000) for reasonable, documented costs incurred by the Town or other PEG users, including, but not limited to, technical costs, logo modifications, stationary, promotion, and advertising.

5.1.3 Grantee shall provide an upstream fiber optic connection and all necessary headend equipment for the purpose of providing PEG Access video origination between the following locations and Grantee's headend within nine (9) months of receiving a written request from the Town: the meeting chamber in the Berryville-Clarke County Government Center and Grantee's headend, and Clarke County High School. The upstream connections referred to in this paragraph shall be referred to as a "Return Link" or as the "Return Links." The Grantee shall maintain both upstream links in good operating condition, and shall ensure that such links are at all times capable of transmitting PEG Access programming signals from the origination point to the headend without material distortion or degradation, in accordance with applicable industry technical standards.

5.1.3.1 If the Town submits a request for either or both of the Return Links on or before the third anniversary of the Effective Date, the Grantee shall provide the requested link or links at its sole cost and expense, at no cost to the Town, and without itemizing the cost of the link or links on subscriber bills. If, however, the Town requests a link after the third anniversary of the Effective Date, the Grantee shall provide the requested link or links only if (i) the Town agrees to bear the cost of construction and installation of the necessary fiber optic plan and equipment; (ii) the Town consents to the itemization of subscriber bills of the entire cost of such construction and installation; or (iii) the Town and the Grantee agree on an alternative funding plan, which may consist of, without limitation a combination of payments by the Town and itemization on Subscriber bills. The Town may also submit a request for either or both Return Links on conjunction with Clarke County, in which case references to the Town in this paragraph shall be read to include the Town and the County.

5.1.4 Grantee shall not interfere with the ability of competing cable operators and open video system operators designated by the Town (the "Competing Operators") to obtain the content of any of the programming on the PEG Channels. Grantee shall not object to the connection of compatible equipment to facilities located at the Town's PEG programming origination facility or facilities by Competing Operators for the purpose of obtaining access to the PEG Channel signals and transporting such signals to their subscribers by means of their own facilities, nor shall Grantee object to the transmission of the PEG Channel signals by Competing Operators.

5.1.5 The PEG Channels shall be carried on the Basic Service tier. The Grantee shall monitor the two (2) PEG Access Channels for technical quality and shall ensure that they are maintained so that they are capable of transmitting signals in accordance with technical standards equivalent to those which apply to the Cable System's commercial channels. Grantee shall insure that there is no material degradation in the quality of the Access Channel signals that are received by the Grantee for distribution by Grantee over the Cable System, as a result of the condition of the Return Links or associated equipment owned by Grantee.

5.2 PEG and I-NET Capital Support. In support of the Town's production of local PEG programming and the Institutional Network, if the Town submits a written request, Grantee shall provide an annual capital grant to the Town ("PEG and I-Net Capital Grant") in the amount of fifty cents (\$0.50) per subscriber per month. Grantee's obligation to pay the PEG and I-Net Capital Grant shall commence ninety (90) days after the end of the billing quarter during which the Town's request was received (the "Grant Commencement Date"). Such grant shall be used by the Town for PEG access equipment, including, but not limited to, studio and portable production equipment, editing equipment and program playback equipment, or for renovation or construction of PEG access facilities, as well as for I-Net capital purposes. Payment of the PEG and I-Net grant shall be made annually. The PEG and I-Net Grant payment, along with a brief summary of the information upon which it is based, shall be delivered to the Town annually, no later than sixty (60) days after each anniversary of the Grant Commencement Date.

5.3 PEG Indemnification. All local producers and users of any of the PEG facilities or Channels shall agree in writing to hold harmless Grantee and the Town from any and all liability or other injury, including the reasonable cost of defending claims or litigation, arising from or in connection with claims for failure to comply with applicable federal laws, rules, regulations or other requirements of local, state or federal authorities; for claims of libel, slander, invasion of privacy, or the infringement of common law or statutory copyright; for unauthorized use of any trademark, trade name or service mark; for breach of contractual or other obligations owing to third parties by the producer or user; and for any other injury or damage in law or equity, which result from the use of a PEG facility or Channel. Furthermore, all local producers and users of any of the PEG facilities or Channels shall agree in writing, and the Town shall require that such local producer or user agree in writing, to authorize Grantee to transmit programming consistent with this Agreement.

5.4 Itemization. To the extent permitted by federal law, the Grantee shall be allowed to recover the costs arising from the provision of the PEG and I-Net Grant from Subscribers and to include such costs as a separately billed line item on each Subscriber's bill. The parties agree that none of such costs constitutes or is part of any Franchise fee, and all such costs fall within one or more of the exceptions listed in 47 U.S.C. § 542.

5.5 I-Net Agreement. The County and the Grantee have agreed to the terms of a Fiber Use Agreement (the "Fiber Agreement"), pursuant to which the Grantee grants the County the continuing right to use the I-Net. The Grantee acknowledges that the Town is an authorized user of the I-Net, and acknowledges that the County and the Grantee have entered into the Fiber Agreement in lieu of agreeing on terms under which the Grantee would construct and maintain I-Net facilities to meet the Town's needs as part of this agreement. The parties further agree that any and all payments made to the Grantee pursuant to the Fiber Agreement are capital in nature

and that amounts payable to the Grantee pursuant to the Fiber Agreement may be paid from the PBG and I-Net Grant, and the Grantee expressly waives any claim that such payments are prohibited by any provision of applicable law.

SECTION 6 - Communications Tax and Franchise Fee

6.1 **Communications Tax.** Grantee shall comply with the provisions of Section 58.1-645 *et seq.* of the Code of Virginia, pertaining to the Virginia Communications Sales and Use Tax, as amended (the "Communications Tax"), and Sections 6.2 through 6.6 of this Agreement shall not have any effect, for so long as the Communications Tax or a successor state or local tax that would constitute a franchise fee for purposes of 47 U.S.C. § 641, as amended, is imposed on the sale of Cable Services by the Grantee to Subscribers in the Town.

6.2 **Payment of Franchise Fee to Town.** In the event that the Communications Tax is repealed and no successor state or local tax is enacted that would constitute a franchise fee for purposes of 47 U.S.C. § 641, as amended, Grantee shall pay to the Town a Franchise fee of five percent (5%) of annual Gross Revenue, beginning on the effective date of the repeal of such tax (the "Repeal Date"). Beginning on the Repeal Date, the terms of Section 6.2 through 6.6 of this Agreement shall take effect. In accordance with Title VI of the Communications Act, the twelve (12) month period applicable under the Franchise for the computation of the Franchise fee shall be a calendar year. Such payments shall be made no later than thirty (30) days following the end of each calendar quarter. Should Grantee submit an incorrect amount, Grantee shall be allowed to add or subtract that amount in a subsequent quarter, but no later than ninety (90) days following the close of the calendar year for which such amounts were applicable; such correction shall be documented in the supporting information required under Section 6.3 below.

6.3 **Supporting Information.** Each Franchise fee payment shall be accompanied by a brief report prepared by a representative of Grantee showing the basis for the computation, and a breakdown by major revenue categories (such as Basic Service, premium service, etc.). The Town shall have the right to reasonably request further supporting information for each Franchise fee payment, subject to the confidentiality provision of Section 8.3.3.

6.4 **Limitation on Franchise Fee Actions.** The period of limitation for recovery of any Franchise fee payable hereunder shall be five (5) years from the date on which payment by Grantee is due.

6.5 **Bundled Services.** This Section 6.5 shall only apply if state or federal law does not otherwise address the computation of franchise fees or gross revenues in connection with the provision of Cable Service as part of a bundle or package with any Non-Cable Service. If the Grantee bundles Cable Service with Non-Cable Service, the Grantee agrees that it will not intentionally or unlawfully allocate such revenue for the purpose of evading the Franchise fee payments under this Agreement.

6.6. Audit.

6.6.1 Subject to the confidentiality requirements of Section 8.3.3 of this Agreement, the Town, or such Person or Persons designated by the Town, shall have the right to inspect and copy records and the right to audit and to recompute any amounts determined to be payable under this Franchise, without regard to by whom they are held. If an audit discloses an overpayment or underpayment of franchise fees or of the PBG and I-Net grant, the Town shall notify the Grantee of such overpayment or underpayment within ninety (90) days of the date the audit was completed. The Town, in its sole discretion, shall determine the completion date for any audit conducted hereunder. Audit completion is not to be unreasonably delayed by either party.

6.6.2 Subject to the confidentiality requirements of Section 8.3.3 of this Franchise, the Grantee shall be responsible for providing to the Town all records necessary to confirm the accurate payment of franchise fees and the PEG and I-Net grant. The Grantee shall maintain such records for five (5) years. The Town's audit expenses shall be borne by the Town unless the audit determines the payment to the Town should be increased by more than five percent (5%) in the audited period, in which case the costs of the audit shall be paid by the Grantee to the Town within thirty (30) days following written notice to the Grantee by the Town of the underpayment, which notice shall include a copy of the audit report. If recomputation results in additional revenue to be paid by Grantee to the Town, such amount shall be subject to an interest charge of the Prime rate plus one percent (1%). If the audit determines that there has been an overpayment by the Grantee, the Grantee may credit any overpayment against its next payment; and, the Town shall waive the interest charge on any past due amounts that were a result of such overpayment by the Grantee. The auditor shall not be compensated on a success based formula, e.g., payment based on a percentage of any underpayment, if any.

6.6.3 The audit provisions set forth in this subsection shall similarly apply to the PBG and I-NET support payments specified in subsection 5.2 of this Franchise.

SECTION 7 - Customer Service Standards; Customer Bills; and Privacy Protection

7.1 Customer Service Standards. Customer service requirements are set forth in Exhibit B, which shall be binding unless amended by written consent of the parties.

7.2 Customer Bills. Customer bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Subscribers, and in a way that (i) is not misleading and (ii) does not omit material information. Notwithstanding anything to the contrary in Section 7.2, above, the Grantee may, in its sole discretion, consolidate costs on Subscriber bills as may otherwise be permitted by Section 622(c) of the Cable Act (47 U.S.C. §542(c)).

7.3 Privacy Protection. The Grantee shall comply with all applicable federal and state privacy laws, including Section 631 of the Cable Act and regulations adopted pursuant thereto.

SECTION 8 - Oversight and Regulation by Town

8.1 **Oversight of Franchise.** In accordance with applicable law, the Town shall have the right to oversee, regulate and, on reasonable prior written notice and in the presence of Grantee's employee, periodically inspect the construction, operation and maintenance of the Cable System in the Franchise Area, and all parts thereof, as necessary to monitor Grantee's compliance with the provisions of this Franchise Agreement.

8.2 **Technical Standards.** The Grantee shall comply with all applicable technical standards of the FCC as published in subpart K of 47 C.F.R. § 76. To the extent those standards are altered, modified, or amended during the term of this Franchise, the Grantee shall comply with such altered, modified or amended standards within a reasonable period after such standards become effective. The Town shall have, upon written request, the right to obtain a copy of tests and records required to be performed pursuant to the FCC's rules.

8.3 Maintenance of Books, Records, and Files.

8.3.1 **Books and Records.** Throughout the term of this Franchise Agreement, the Grantee agrees that the Town, upon reasonable prior written notice to the Grantee, may review such of the Grantee's books and records regarding the operation of the Cable System and the provision of Cable Service in the Franchise Area which are reasonably necessary to monitor Grantee's compliance with the provisions of this Franchise Agreement at the Grantee's business office, during normal business hours, and without unreasonably interfering with Grantee's business operations. Such books and records shall include any records required to be kept in a public file by the Grantee pursuant to the rules and regulations of the FCC. All such documents pertaining to financial matters that may be the subject of an inspection by the Town shall be retained by the Grantee for a minimum period of three (3) years.

8.3.2 **File for Public Inspection.** Throughout the term of this Franchise Agreement, the Grantee shall maintain at its business office, in a file available for public inspection during normal business hours, those documents required pursuant to the FCC's rules and regulations.

8.3.3 **Proprietary Information.** Notwithstanding anything to the contrary set forth in this Section, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature, except as provided herein. The City shall further have the right to have independent consultants employed by the City review such disclosed information, contingent upon and subsequent to the execution by such consultants of any relevant non-disclosure agreements ("NDA") that may be required by the Franchisee. Such confidential information shall be subject to the following, to be applied as is most practicable for the purposes of this Agreement:

8.3.3.1 To the extent an exemption under the Virginia Freedom of Information Act permits the Town to maintain the confidentiality of submitted information and the Grantee submits such information to the Town, the Town shall maintain the confidentiality of such information and not disclose it to any public request; or

8.3.3.2 To the extent that information provided to an accountant, attorney, consultant, or any other agent of the Town ("Town Consultant") would not be subject to public disclosure under the Virginia Freedom of Information Act and the Town instructs the Grantee to provide such information to the Town Consultant as may be required by this Agreement, the Grantee shall provide such information to the Town Consultant and the Town shall not take possession of the information nor engage in any act that would jeopardize the confidentiality of such information; or,

8.3.3.3 Franchisee must provide the following documentation to the Town: (i) specific identification of the information; (ii) statement attesting to the reason(s) the Franchisee believes the information is confidential; and (iii) statement that the documents are available at the Franchisee's designated offices for inspection by the Town.

8.3.4 At all times, the Town shall take reasonable steps to protect the proprietary and confidential nature of any books, records, maps, plans or other Town-requested documents that are provided pursuant to this Agreement to the extent they are designated as such by the Franchisee. Nothing in this Section shall be read to require the Franchisee to violate federal or state law protecting Subscriber privacy.

8.4 Records Required. The Grantee shall at all times maintain:

8.4.1 Records of all written complaints for a period of three years after receipt by the Grantee. The term "complaint" as used herein refers to complaints about any aspect of the Cable System or Grantee's cable operations, including, without limitation, complaints about employee courtesy. Complaints recorded will not be limited to complaints requiring an employee service call;

8.4.2 Records of outages for a period of three years after occurrence, indicating date, duration, area, and the number of Subscribers affected, type of outage, and cause;

8.4.3 Records of service calls for repair and maintenance for a period of three years after resolution by Grantee, indicating the date and time service was required, the date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was resolved; and

8.4.4 Records of installation/reconnection and requests for service extension for a period of three years after the request was fulfilled by Grantee, indicating the date of request, date of acknowledgment, and the date and time service was extended.

8.5 FCC Testing. Within fourteen (14) days of a written request by the Town, a written report of test results of FCC performance testing will be provided to the Town Manager.

8.6 Annual Report. Upon receipt of a written request from the Town, and no later than one hundred twenty (120) days after the end of the Grantee's fiscal year, the Grantee shall submit a written report to the Town, in a form reasonably satisfactory to the Town, which shall include:

8.6.1 An annual summary of complaints, identifying both number and nature of the complaints received and an explanation of the disposition.

8.6.2 A copy of the Grantee's rules, regulations and policies available to Subscribers of the Cable System, including but not limited to (i) all Subscriber rates, fees and charges; (ii) copies of the Grantee's contract or application forms for Cable Services; and (iii) a detailed summary of the Grantee's policies concerning the processing of Subscriber complaints; delinquent Subscriber disconnect and reconnect policies; Subscriber privacy and any other terms and conditions adopted by the Grantee in connection with the provision of Cable Service to Subscribers;

8.7 Periodic Review.

8.7.1 The Town may hold a performance evaluation hearing every year within sixty (60) days of each anniversary of the Effective Date of this Franchise. All such evaluation hearings shall be open to the public. The purpose of said evaluation hearing shall be to, among other things, (i) review the Grantee's compliance to the terms and conditions of this Franchise Agreement, with emphasis on PEG Access Channels, facilities and support; customer service and complaint response; and (ii) hear comments, suggestions and/or complaints from the public. The Town shall provide the Grantee with advance, written notice regarding any known compliance matters that the Town intends to address at the hearing.

8.7.2 The Town shall have the right to question the Grantee on any aspect of this Franchise Agreement including, but not limited to, the operation, maintenance and/or removal of the Cable System. During review and evaluation by the Town, the Grantee shall fully cooperate with the Town and/or his or her designee(s), and produce such documents or other materials relevant to such review as are reasonably requested from the Town. Any Subscriber or other Person may submit comments during such review hearing, either orally or in writing, and such comments shall be duly considered by the Town.

8.7.3 Within sixty (60) days after the conclusion of such review hearing(s), the Town may issue a written report with respect to the Grantee's compliance. If noncompliance is found which may result in a violation of any of the provisions of this Franchise Agreement, the Grantee shall respond in accordance with Section 12.1.

SECTION 9 - Transfer or Change of Control of Cable System or Franchise

9.1 No transfer of this Franchise shall occur without the prior written consent of the Town, which consent shall not be unreasonably withheld, delayed or conditioned. No transfer shall be made to a Person, group of Persons or Affiliate that is not legally, technically and financially qualified to operate the Cable System and satisfy the obligations hereunder.

SECTION 10 - Insurance and Indemnity

10.1 Insurance. Throughout the term of this Franchise Agreement, the Grantee shall, at its own cost and expense, maintain Comprehensive General Liability Insurance and provide the Town certificates of insurance designating the Town and its officers, boards, commissions, councils, elected officials, agents and employees as additional insureds and demonstrating that the Grantee has obtained the insurance required in this Section. Such policy or policies shall be in the minimum amount of One Million Dollars (\$1,000,000.00) for bodily injury or death to any one person, and One Million Dollars (\$1,000,000.00) for bodily injury or death of any two or more persons resulting from one occurrence, and One Million Dollars (\$1,000,000.00) for property damage resulting from any one accident. Such policy or policies shall be non-cancelable except upon thirty (30) days prior written notice to the Town. The Grantee shall provide workers' compensation coverage in accordance with applicable law. The Grantee shall indemnify and hold harmless the Town from any workers compensation claims to which the Grantee may become subject during the term of this Franchise Agreement

10.2 Indemnification. The Grantee shall indemnify, defend and hold harmless the Town, its officers, employees, and agents from and against any liability or claims resulting from property damage or bodily injury (including accidental death) that result from the Grantee's construction, operation, maintenance or removal of the Cable System, including, but not limited to, reasonable attorneys' fees and costs, provided that the Town shall give the Grantee timely written notice of its obligation to indemnify and defend the Town within a reasonable time of receipt of a claim or action pursuant to this Section. If the Town determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Town.

SECTION 11 - System Description and Service

11.1 System Capacity. During the term of this Agreement the Grantee's Cable System shall be capable of providing a minimum of eighty (80) channels of video programming with satisfactory reception available to its Subscribers in the Franchise Area.

11.2 Service to School and Government Buildings. The Grantee shall provide without charge within the Franchise Area one service outlet activated for Basic Service to each existing public building listed in Exhibit A, including, without limitation, each public school, each public library, each location occupied by the Town police department, each location occupied by fire and rescue operations, and other locations occupied or used by the Town government for municipal purposes. During the term of this Agreement, the Town may designate additional such locations to receive one service outlet activated for Basic Service by submitting a request for service to the Grantee, and Grantee shall install the service outlet, including the drop line and any necessary equipment, within sixty (60) days of the Town's designation for any drop up to but not exceeding two hundred (200) feet. Exhibit A shall be deemed amended accordingly. For all service outlets, if it is necessary to extend the Grantee's trunk or feeder lines more than two hundred (200) feet solely to provide service to any such school or public building, the Town shall have the option either of paying Grantee's direct costs for such extension in excess of two hundred (200) feet, or of releasing Grantee from the obligation to provide service to such building. Furthermore, Grantee shall be permitted to recover, from any public building owner

entitled to free service, the direct cost of installing, when requested to do so, more than one outlet, or concealed inside wiring, or a service outlet requiring more than two hundred (200) feet of drop cable; provided, however, that Grantee shall not charge for the provision of Basic Service to the additional service outlets once installed. The Town may extend its one outlet to additional locations throughout the building at its own installation expense without an additional monthly fee for the provision of Basic Service to those locations.

11.3 Standby Power. The Grantee shall provide standby power generating capacity at the headend and at all hubs. The Grantee shall maintain motorized standby power generators capable of up to twenty-four (24) hours duration at the headend and all hubs, with automatic response systems to alert the Grantee's Local Management Center when commercial power is interrupted. The power supplies serving the distribution plant shall be capable of providing power to the Cable System for not less than two (2) hours, in the event of an electrical outage.

11.4 Emergency Alert System. Grantee shall comply with the Emergency Alert System requirements of the FCC in order that emergency messages may be distributed over the System.

SECTION 12 - Enforcement of Franchise

12.1 Notice of Violation. In the event that the Town believes that Grantee has not complied with the terms of the Franchise, the Town shall informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, the Town shall notify Grantee in writing of the exact nature of the alleged noncompliance.

12.2 Grantee's Right to Cure or Respond. Grantee shall have thirty (30) days from receipt of the written notice described in Section 13.1 to: (i) respond to the Town, if Grantee contests (in whole or in part) the assertion of noncompliance; (ii) cure such default; or (iii) in the event that, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Town of the steps being taken and the projected date that they will be completed.

12.3 Enforcement. Subject to applicable federal and state law and the terms and conditions of this Agreement, the Town may apply one or a combination of the following remedies if the Town determines that the Grantee is in default of any provision of the Franchise:

12.3.1 Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or

12.3.2 Commence an action at law for monetary damages or seek other equitable relief; or

12.3.3 In the case of a substantial material default of a material provision of the Franchise, seek to revoke the Franchise in accordance with Section 12.4; or,

12.3.4 Assess liquidated damages, or apply any other remedy provided for in this Agreement or applicable federal, state or local laws.

12.4 Revocation. Should the Town seek to revoke the Franchise, the Town shall give written notice to Grantee of its intent. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event the Town has not received a satisfactory response from Grantee, it may then seek termination of the Franchise at a public hearing. The Town shall cause to be served upon the Grantee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

12.4.1 At the designated hearing, Grantee shall be provided a fair opportunity for full participation, in accordance with the standards and procedures then applicable for legislative matters before the Town Council.

12.4.2 Following the public hearing, Grantee shall be provided up to thirty (30) days to submit its proposed findings and conclusions in writing and thereafter the Town shall determine (i) whether an Event of Default has occurred; (ii) whether such Event of Default is excusable; and (iii) whether such Event of Default has been cured or will be cured by the Grantee. The Town shall also determine whether to revoke the Franchise based on the information presented, or, where applicable, grant additional time to the Grantee to effect any cure. If the Town determines that the Franchise shall be revoked, the Town shall promptly provide Grantee with a written decision setting forth its reasoning. Grantee may appeal such determination of the Town to an appropriate court, which shall have the power to review the decision of the Town *de novo*. Grantee shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Grantee's receipt of the determination of the Town.

12.4.3 The Town may, at its sole discretion, take any lawful action which it deems appropriate to enforce the Town's rights under the Franchise in lieu of revocation of the Franchise.

12.5 Performance Guarantees.

12.5.1 To ensure the performance of its obligations under this Franchise, the Grantee shall establish a security fund in the form of a letter of credit for the Town in the amount of ten thousand dollars (\$10,000) (the "Security Fund"). Recovery under the letter of credit shall be in accordance with the procedures set forth in Section 12.6.3. If at the time of recovery under the letter of credit by the Town, the amounts available are insufficient to provide the total payment towards which the withdrawal is directed, the balance of such payment shall continue as the obligation of the Grantee to the Town until it is paid. Within thirty (30) days of being notified that any amount has been recovered by the Town, the Grantee shall restore the letter of credit to the total amount specified above.

12.5.2 To further ensure the Grantee's faithful performance of its obligations hereunder, the Grantee shall obtain and maintain during the entire term of the Franchise, and any renewal or extensions thereof, a performance bond from a financial institution licensed to do business in Virginia in the amount of twenty thousand dollars (\$20,000).

12.6 Liquidated Damages.

12.6.1 Because the Grantee's failure to comply with provisions of this Franchise may result in injury to the Town and because it may be difficult to quantify the extent of such injury, the Town and the Grantee agree that, subject to the procedures in Section 12.6.3, liquidated damages may be assessable against the Grantee for certain violations of provisions of this Franchise, and that such liquidated damages may be chargeable to the Grantee's Security Fund up to the limits specified below in the event of non-payment by the Grantee. On an annual basis from the Effective Date of the Franchise, liquidated damages in total will not exceed ten thousand dollars (\$10,000) (the "Liquidated Damages Cap"). The Grantee hereby agrees that the liquidated damages specified herein are reasonable and do not constitute a penalty or fine. The liquidated damages shall not apply when non-compliance is caused by Force Majeure events and shall only apply from the date of notice being provided to the Grantee unless otherwise provided for or consistent with the time periods of notice and cure specific to certain liquidated damages.

12.6.1.1 Failure to supply information, reports, or filings lawfully required under the Franchise: \$50 per day for each day the violation continues after the Grantee is given a thirty (30) day period to cure the failure and then written notice has been provided to the Grantee by the Town of such continuing violation;

12.6.1.2 Failure to file, obtain, maintain or replenish the security fund in a timely fashion: \$200 per day, following a fourteen (14) day cure period;

12.6.1.3 For violation of applicable technical standards established by the FCC or other lawful authority: \$100 per day for each day the violation continues after a thirty (30) day cure period;

12.6.1.4 For each day during which the Town determines that the Grantee has violated customer service standards pursuant to Exhibit B, except for those standards set forth in Subsection 12.6.1.5 below: \$200 per violation, following a seven (7) day cure period, except that such cure period does not apply to customer service standards that themselves provide a time to act or a specific cure period;

12.6.1.5 For failure to meet customer service standards with regard to telephone answering time, time to transfer a call to a customer service representative, or excessive busy signals: if such standards are not met according to the terms in which such standards are established in Exhibit B: \$100 for each quarter in which such standards were not met if the failure was by less than 5%; \$200 for each quarter in which such standards were not met if the failure was by 5% or more but less than 15%; and \$300 for each quarter in which such standards were not met if the failure was by 15% or more;

12.6.1.6 For failure to comply with the requirements for the provision of PEG programming: \$50 per day.

12.6.2 The Town Manager or Town Council may reduce or waive any of the above-listed liquidated damages if the Town Manager or Town Council determines that such waiver is in the best interests of the Town.

12.6.3 If the Town Manager, following reasonable notice to the Grantee to cure any problem (except for specific notice periods as may be contained in this Agreement) that might result in liquidated damages pursuant to the Agreement, determines that the assessment of liquidated damages is justified, he or she shall issue to the Grantee, by certified mail, a notice of intention to assess liquidated damages. The notice shall set forth the basis of the assessment, and shall inform the Grantee that liquidated damages will be assessed from the date of the notice unless the assessment notice is appealed for hearing before the Town Council and the Town Council rules (1) that the violation has been corrected, or (2) that an extension of the time or other relief should be granted, or (3) the Town Council disagrees with the findings of the Town Manager. If the Grantee desires a hearing before the Town Council, it shall send a written notice of appeal, by certified mail, to the Town Manager within ten (10) days of the date on which the Town Manager sent the notice of intention to assess liquidated damages. After the hearing, if the Town Council sustains, in whole or in part, the Town Manager's assessment of liquidated damages, the Town Council may at any time thereafter draw upon the security fund for the amount reviewed by the Town Council after providing the Grantee thirty (30) days to pay said amount. Unless the Town Council indicates to the contrary, said liquidated damages shall be assessed beginning with the date on which the Town Manager sent the notice of intention to assess liquidated damages and continuing thereafter until such time as the violation ceases, as determined by the Town Manager.

12.7 Technical Violation. The Town agrees that it is not its intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for so-called "technical" breach(es) or violation(s) of the Franchise, which shall include, but not be limited, to instances or for matters where a violation or a breach of the Franchise by the Grantee was good faith error that resulted in no or minimal negative impact on the Subscribers within the Franchise Area.

SECTION 13 - Miscellaneous Provisions

13.1 Force Majeure. The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by events which constitute a Force Majeure, as defined herein.

13.2 Notice. All notices shall be in writing and shall be sufficiently given and served upon the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:

To the Town:

To the Grantee: Comcast/Paul Comes

600 Hays Avenue
Staunton, Virginia 24401
Attn: Government Affairs Department

With copies to:

Comcast Cable
7850 Walker Drive
Greenbelt, MD 20770
Attn.: Government Affairs Department

And to:

Comcast Cable Northeast Division
676 Island Pond Rd.
Manchester, NH 03109
Attention: Government Affairs Department

13.3 Entire Agreement. This Franchise Agreement, including all Exhibits, embodies the entire understanding and agreement of the Town and the Grantee with respect to the subject matter hereof and supersedes all prior understandings, agreements and communications, whether written or oral. If the terms of this Agreement are materially altered due to changes in governing law (including but not limited to the law of the Franchisors), then the parties shall negotiate in good faith to reconstitute this Agreement in a form that is consistent with such law and also, to the maximum extent possible, is consistent with the original intent of Franchisee and the Franchisors and preserves the benefits bargained for by each party.

13.4 Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Franchise Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

13.5 Incorporation by Reference.

13.5.1 All presently and hereafter applicable conditions and requirements of federal, State and local laws, including but not limited to the rules and regulations of the FCC and the Commonwealth of Virginia, as they may be amended from time to time, are incorporated herein by reference to the extent not enumerated herein. All such general laws, rules and regulations, as amended, shall control the interpretation and performance of this Franchise to the

extent that any provision of this Franchise conflicts with or is inconsistent with such laws, rules or regulations.

13.5.2 Should the Commonwealth of Virginia, the federal government or the FCC require Grantee to perform or refrain from performing any act the performance or non-performance of which is inconsistent with any provisions herein, the Town and Grantee will thereupon, if they determine that a material provision herein is affected, modify any of the provisions herein to reflect such government action.

13.5.3 Governing Law. This Franchise Agreement shall be deemed to be executed in the Commonwealth of Virginia, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the Commonwealth of Virginia, as applicable to contracts entered into and performed entirely within the Commonwealth.

13.6 Modification. No provision of this Franchise Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the Town and the Grantee, which amendment shall be authorized on behalf of the Town through the adoption of an appropriate resolution or order by the Town, as required by applicable law.

13.7 No Third-Party Beneficiaries. Nothing in this Franchise Agreement is or was intended to confer third-party beneficiary status on any member of the public to enforce the terms of this Franchise Agreement.

13.8 No Waiver of Rights.

13.8.1 The failure of the Town on one or more occasions to exercise a right or to require compliance or performance under this Franchise Agreement, the Cable Ordinance or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by the Town, nor to excuse Grantee from complying or performing, unless such right or such compliance or performance has been specifically waived in writing.

13.8.2 The failure of the Grantee on one or more occasions to exercise a right under this Franchise Agreement or applicable law, or to require performance under this Franchise Agreement, shall not be deemed to constitute a waiver of such right or of performance of this Agreement, nor shall it excuse the Town from performance, unless such right or performance has been specifically waived in writing

13.9 Administration. The administration of this Agreement shall be vested in the Town Manager, or his or her designee. When not otherwise prescribed herein, all matters herein required to be filed with the Town shall be filed with the Town Manager.

IN WITNESS WHEREOF, this Franchise Agreement has been executed by the duly authorized representatives of the parties as set forth below, as of the date set forth below:

Attest:

Town of Berryville

By: _____
Name: _____
Title: _____

Attest:

Comcast of
California/Maryland/Pennsylvania/Virginia/West Virginia,
LLC.

By: _____
Name: Mary McLaughlin
Title: Regional Senior Vice President
Date: _____

EXHIBIT A

FACILITIES TO BE PROVIDED COURTESY CABLE SERVICE

Location	Address	
Government Center	101 Chalmers Ct.	Berryville VA 22611
Public Works	201 Tom Whitacre Cir	Berryville VA 22611
Sheriff's Office	100 N Church St	Berryville, VA 22611
Circuit Court Building	102 N Church St	Berryville, VA 22611
General District Court	104 N Church St	Berryville, VA 22611
Social Services	311 E Main St	Berryville, VA 22611
Old Library	36 E Main St	Berryville, VA 22611
Enders Fire Station	9 S Buckmarsh St	Berryville, VA 22611
Johnson-Williams Middle School	200 Swan Ave	Berryville, VA 22611
School Board Office	309 W Main St	Berryville, VA 22611
Pupil Personnel	321 W Main St	Berryville, VA 22611
Alternative Education	317 W Main St	Berryville, VA 22611
High School	627 Mosby Blvd	Berryville, VA 22611

EXHIBIT B

CUSTOMER SERVICE STANDARDS

SECTION 1: DEFINITIONS

A. Respond: Grantee's investigation of a Service Interruption by receiving a Subscriber call and opening a trouble ticket, if required.

B. Service Call: The action taken by the Grantee to correct a Service Interruption the effect of which is limited to an individual Subscriber.

C. Significant Outage: A significant outage of the Cable Service shall mean any Service Interruption lasting at least four (4) continuous hours that affects at least ten percent (10%) of the Subscribers in the Franchise Area.

D. Standard Installation: Installations where the Subscriber is within two hundred (200) feet of trunk or feeder lines.

E. Normal Operating Conditions: Those service conditions which are within the control of the Franchisee. Those conditions which are not within the control of the Franchisee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather. Those conditions which are ordinarily within the control of the Franchisee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.

SECTION 2: TELEPHONE AVAILABILITY

A. The Grantee shall maintain a toll-free number to receive all calls and inquiries from Subscribers in the Franchise Area and/or residents regarding Cable Service. Grantee representatives trained and qualified to answer questions related to Cable Service in the Franchise Area must be available to receive reports of Service Interruptions twenty-four (24) hours a day, seven (7) days a week, and other inquiries at least forty-five (45) hours per week. Grantee representatives shall identify themselves by name when answering this number.

B. The Franchisee's toll-free telephone numbers will appear on Subscriber bills, the Franchisee's website and in the annual notice.

C. Grantee may use an Automated Response Unit ("ARU") or a Voice Response Unit ("VRU") to distribute calls. If a foreign language routing option is provided, and the Subscriber does not enter an option, the menu will default to the first tier menu of English options.

After the first tier menu (not including a foreign language rollout), if Subscribers do not select any option, the ARU or VRU will forward the call to a queue for a live representative. The Grantee may reasonably substitute this requirement with another method of handling calls from Subscribers who do not have touch-tone telephones.

D. Under Normal Operating Conditions, calls received by the Grantee shall be answered within thirty (30) seconds. The Grantee shall meet this standard for ninety percent (90%) of the calls it receives at all call centers receiving calls from Subscribers in the Town, as measured on a cumulative quarterly calendar basis. Measurement of this standard shall include all calls received by the Grantee at all call centers receiving calls from Subscribers in the Town, whether they are answered by a live representative, by an automated attendant, or abandoned after 30 seconds of call waiting.

E. Under Normal Operating Conditions, callers to the Grantee shall receive a busy signal no more than three (3%) percent of the time during any calendar quarter.

F. Upon request from the Town, but in no event more than once a quarter thirty (30) days following the end of each quarter, the Grantee shall report to the Town the following for all call centers receiving calls from Subscribers except for temporary telephone numbers set up for national promotions:

(1) Percentage of calls answered within thirty (30) seconds as set forth in Subsection 2.D.

(2) Percentage of time Subscribers received busy signal when calling the customer service center as set forth in Subsection 2.E.

Subject to consumer privacy requirements, underlying activity will be made available to the Town for review upon reasonable request.

G. At the Grantee's option, the measurements and reporting above may be changed from calendar quarters to billing or accounting quarters. The Grantee shall notify the Town of such a change at least thirty (30) days in advance of any implementation.

SECTION 3: INSTALLATIONS AND SERVICE APPOINTMENTS

A. All installations will be in accordance with FCC rules, including but not limited to, appropriate grounding, connection of equipment to ensure reception of Cable Service, and the provision of required consumer information and literature to adequately inform the Subscriber in the utilization of the Grantee-supplied equipment and Cable Service. Drop wires in underground service areas that are temporarily placed above ground shall be buried within thirty (30) calendar days of the date and time of the temporary installation, except in those situations where weather conditions make trenching impractical.

B. Under Normal Operating Conditions, Standard Installations shall be performed within seven (7) business days after an order is placed.

The Grantee shall meet this standard under Normal Operating Conditions for ninety-five percent (95%) of the Standard Installations it performs, as measured on a calendar quarter basis.

C. The Grantee shall provide the Town with a report upon request from the Town, but in no event more than once a quarter thirty (30) days following the end of each quarter, noting the percentage of Standard Installations completed within the seven (7) day period. Those requested outside of the seven (7) day period by the Subscriber will be included as compliant. Subject to consumer privacy requirements, underlying activity will be made available to the Town for review upon reasonable request.

At the Grantee's option, the measurements and reporting of above may be changed from calendar quarters to billing or accounting quarters. The Grantee shall notify the Town of such a change not less than thirty (30) days in advance.

D. The Grantee will offer Subscribers "appointment window" alternatives for arrival to perform installations, Service Calls and other activities of a maximum four (4) hours scheduled time block during appropriate daylight available hours, usually beginning at 8:00 AM unless it is deemed appropriate to begin earlier by location exception. At the Grantee's discretion, the Grantee may offer Subscribers appointment arrival times other than these four (4) hour time blocks, if agreeable to the Subscriber. These hour restrictions do not apply to weekends.

E. Upon the Subscriber's request, the Grantee's service representatives will have the ability to issue service credits, at their sole discretion, to address Subscriber complaints related to missed appointments.

F. Under Normal Operating Conditions, the Grantee may not cancel an appointment with a Subscriber after the close of business on the business day prior to the scheduled appointment. If the Grantee representative is running late for an appointment with a Subscriber and will not be able to keep the appointment as scheduled, the Subscriber shall be contacted. The appointment shall be rescheduled, as necessary, at a time which is convenient for the Subscriber.

G. Between the time a new Subscriber is signed up for service and the time service is installed, he or she shall be afforded a right of rescission.

SECTION 4: SERVICE INTERRUPTIONS AND OUTAGES

A. The Grantee shall exercise commercially reasonable efforts to limit any Significant Outage for the purpose of maintaining, repairing, or constructing the Cable System. Except in an emergency or other situation necessitating a more expedited or alternative notification procedure, the Grantee may schedule a Significant Outage for a period of more than four (4) hours during any twenty-four (24) hour period only after the Town and each affected Subscriber in the Franchise Area have been given fifteen (15) days prior notice of the proposed Significant Outage.

Notwithstanding the foregoing, Franchisee may perform modifications, repairs and upgrades to the System without prior notification between 12.01 a.m. and 6 a.m., which may interrupt service.

B. Grantee representatives who are capable of responding to Service Interruptions must be available to Respond twenty-four (24) hours a day, seven (7) days a week.

C. Under Normal Operating Conditions, the Grantee must Respond to a call from a Subscriber regarding a Service Interruption or other service problems within the following time frames:

(1) Within twenty-four (24) hours, including weekends, of receiving Subscriber calls respecting Service Interruptions in the Franchise Area.

(2) The Grantee must begin actions to correct all other Cable Service problems the next business day after notification by the Subscriber or the Town of a Cable Service problem.

D. Under Normal Operating Conditions, the Grantee shall complete Service Calls within seventy-two (72) hours of the time Grantee commences to Respond to the Service Interruption, not including weekends and situations where the Subscriber is not reasonably available for a Service Call to correct the Service Interruption.

E. The Grantee shall meet the standard in Subsection D. of this Section for ninety percent (90%) of the Service Calls it completes, as measured on a quarterly basis.

F. The Grantee shall provide the Town with a report upon request from the Town, but in no event more than once a quarter within thirty (30) days following the end of each calendar quarter, noting the percentage of Service Calls completed within the seventy-two (72) hour period not including Service Calls where the Subscriber was reasonably unavailable for a Service Call within the seventy-two (72) hour period as set forth in this Section. Subject to consumer privacy requirements, underlying activity will be made available to the Town for review upon reasonable request. At the Grantee's option, the above measurements and reporting may be changed for calendar quarters to billing or accounting quarters. The Grantee shall notify the Town of such a change at least thirty (30) day in advance.

G. Under Normal Operating Conditions, the Grantee shall provide a credit upon Subscriber request when all Channels received by that Subscriber are out of service for a period of four (4) consecutive hours or more. The credit shall equal, at a minimum, a proportionate amount of the affected Subscriber(s) current monthly bill. In order to qualify for the credit, the Subscriber must promptly report the problem and allow the Grantee to verify the problem if requested by the Grantee. If Subscriber availability is required for repair, a credit will not be provided for such time, if any, that the Subscriber is not reasonably available.

H. Under Normal Operating Conditions, if a Significant Outage affects all Video Programming Cable Services for more than twenty-four (24) consecutive hours, the Grantee shall issue a credit to every affected Subscribers who contacts the Grantee in connection with such Outage, including, without limitation, to notify Grantee of the Outage, to request a credit, or to

inquire as to the remedies available for loss of service related to the Outage. The credit shall be in the amount equal to the respective Subscriber's monthly recurring charges for the proportionate time the Cable Service was out, or in the amount equal to the charge for the basic plus enhanced basic level of service for the proportionate time the Cable Service was out, whichever is technically feasible or, if both are technically feasible, as determined by Grantee provided such determination is non-discriminatory. Such credit shall be reflected on Subscriber billing statements within the next available billing cycle following the outage. Failure to provide a credit in a timely manner in accordance with this section shall be deemed a violation of customer service standards, and subject to all applicable remedies, including, without limitation, liquidated damages pursuant to Section 13.7.1.5 of the Franchise Agreement.

I. With respect to service issues concerning Cable Services provided to Town facilities, Grantee shall Respond to all inquiries from the Town within four (4) hours and shall commence necessary repairs within twenty-four (24) hours under Normal Operating Conditions. If such repairs cannot be completed within twenty-four (24) hours, the Grantee shall notify the Town in writing as to the reason(s) for the delay and provide an estimated time of repair.

J. The Grantee shall keep maintenance crew and repair staff to meet the Grantee's obligations under these Customer Service Standards.

SECTION 5: CUSTOMER COMPLAINTS

Under Normal Operating Conditions, the Grantee shall investigate Subscriber complaints referred by the Town within seventy-two (72) hours. The Grantee shall notify the Town of those matters that necessitate an excess of seventy-two (72) hours to resolve, but those matters must be resolved within fifteen (15) days of the initial complaint. The Town may require reasonable documentation to be provided by the Grantee to substantiate the request for additional time to resolve the problem. For purposes of this Section, "resolve" means that the Grantee shall perform those actions, which, in the normal course of business, are necessary to investigate the Subscriber's complaint and advise the Subscriber of the results of that investigation.

SECTION 6: BILLING

A. Subscriber bills must be itemized to describe Cable Services purchased by Subscribers and related equipment charges. Bills shall clearly delineate activity during the billing period, including optional charges, rebates, credits, and aggregate late charges. Grantee shall, without limitation as to additional line items, be allowed to itemize as separate line items, Franchise fees, taxes and/or other governmentally imposed fees. The Grantee shall maintain records of the date and place of mailing of bills.

B. Every Subscriber with a current account balance sending payment directly to Grantee shall be given at least twenty (20) days from the date statements are mailed to the Subscriber until the payment due date.

C. A specific due date shall be listed on the bill of every Subscriber whose account is current. Delinquent accounts may receive a bill which lists the due date as upon receipt; however,

the current portion of that bill shall not be considered past due except in accordance with Subsection 6.B. above.

D. Any Subscriber who, in good faith, disputes all or part of any bill shall have the option of withholding the disputed amount without disconnect or late fee being assessed until the dispute is resolved provided that:

- (1) The Subscriber pays all undisputed charges;
- (2) The Subscriber provides notification of the dispute to Grantee within five (5) days prior to the due date; and
- (3) The Subscriber cooperates in determining the accuracy and/or appropriateness of the charges in dispute.
- (4) It shall be within the Grantee's sole discretion to determine when the dispute has been resolved.

E. Under Normal Operating Conditions, the Grantee shall initiate investigation and resolution of all billing complaints received from Subscribers within five (5) business days of receipt of the complaint. Final resolution shall not be unreasonably delayed.

F. The Grantee shall provide a telephone number and address on the bill for Subscribers to contact the Grantee. The Town, furthermore, hereby requests that Grantee omit publishing information specified in 47 C.F.R. § 76.952.

G. The Grantee shall forward a copy of any Cable Service related billing inserts or other mailing sent to Subscribers to the Town upon written request.

H. The Grantee shall provide all Subscribers with the option of paying for Cable Service by check or an automatic payment option where the amount of the bill is automatically deducted from a checking account designated by the Subscriber. Grantee may in the future, at its discretion, permit payment by using a major credit card on a preauthorized basis. Based on credit history, at the option of the Grantee, the payment alternative may be limited.

SECTION 7: DEPOSITS, REFUNDS AND CREDITS

A. The Grantee may require refundable deposits from Subscribers with 1) a poor credit or poor payment history, 2) who refuse to provide credit history information to the Grantee, or 3) who rent Subscriber equipment from the Grantee, so long as such deposits are applied on a non-discriminatory basis.

B. The Grantee shall refund or credit the Subscriber for the amount of the deposit collected for equipment, which is unrelated to poor credit or poor payment history, after one year and provided the Subscriber has demonstrated good payment history during this period. The Grantee shall pay interest on other deposits if required by law.

C. Under Normal Operating Conditions, refund checks will be issued within next available billing cycle following the resolution of the event giving rise to the refund, (e.g. equipment return and final bill payment).

D. Credits for Cable Service will be issued no later than the Subscriber's next available billing cycle, following the determination that a credit is warranted, and the credit is approved and processed. Such approval and processing shall not be unreasonably delayed.

E. Bills shall be considered paid when appropriate payment is received by the Grantee or its authorized agent. Appropriate time considerations shall be included in the Grantee's collection procedures to assure that payments due have been received before late notices or termination notices are sent.

SECTION 8: RATES, FEES AND CHARGES

A. The Grantee shall not, except to the extent expressly permitted by law, impose any fee or charge for Service Calls to a Subscriber's premises to perform any repair or maintenance work related to Grantee equipment necessary to receive Cable Service, except where such problem is caused by a negligent or wrongful act of the Subscriber (including, but not limited to a situation in which the Subscriber reconnects Grantee equipment incorrectly) or by the failure of the Subscriber to take reasonable precautions to protect the Grantee's equipment (for example, a dog chew).

B. The Grantee shall provide reasonable notice to Subscribers of the possible assessment of a late fee on bills or by separate notice.

SECTION 9: DISCONNECTION /DENIAL OF SERVICE

A. The Grantee shall not terminate Cable Service for nonpayment of a delinquent account unless the Grantee provides a notice of the delinquency and impending termination. The notice shall be mailed to the Subscriber to whom the Cable Service is billed. The notice of delinquency and impending termination may be part of a billing statement.

B. Cable Service terminated in error must be restored without charge within twenty-four (24) hours of notice. If a Subscriber was billed for the period during which Cable Service was terminated in error, a credit shall be issued to the Subscriber if the Service Interruption was reported by the Subscriber.

C. Nothing in these standards shall limit the right of the Grantee to deny Cable Service for non-payment of previously provided Cable Services, refusal to pay any required deposit, theft of Cable Service, damage to the Grantee's equipment, abusive and/or threatening behavior toward the Grantee's employees or representatives, or refusal to provide credit history information or refusal to allow the Grantee to validate the identity, credit history and credit worthiness via an external credit agency.

D. Charges for Cable Service will be discontinued at the time of the requested termination of service by the Subscriber, except equipment charges may be applied until equipment has been returned. No period of notice prior to requested termination of service can be required of Subscribers by the Grantee. No charge shall be imposed upon the Subscriber for or related to total disconnection of Cable Service or for any Cable Service delivered after the effective date of the disconnect request, unless there is a delay in returning Grantee equipment or early termination charges apply pursuant to the Subscriber's service contract. If the Subscriber fails to specify an effective date for disconnection, the Subscriber shall not be responsible for Cable Services received after the day following the date the disconnect request is received by the Grantee. For purposes of this subsection, the term "disconnect" shall include Subscribers who elect to cease receiving Cable Service from the Grantee and to receive Cable Service or other multi-channel video service from another Person or entity.

SECTION 10: COMMUNICATIONS WITH SUBSCRIBERS

A. All Grantee personnel, contractors and subcontractors contacting Subscribers or potential Subscribers outside the office of the Grantee shall wear a clearly visible identification card bearing their name and photograph. The Grantee shall make reasonable effort to account for all identification cards at all times. In addition, all Grantee representatives shall wear appropriate clothing while working at a Subscriber's premises. Every service vehicle of the Grantee and its contractors or subcontractors shall be clearly identified as such to the public. Specifically, Grantee vehicles shall have the Grantee's logo plainly visible. The vehicles of those contractors and subcontractors working for the Grantee shall have the contractor's / subcontractor's name plus markings (such as a magnetic door sign) indicating they are under contract to the Grantee.

B. All contact with a Subscriber or potential Subscriber by a Person representing the Grantee shall be conducted in a courteous manner.

C. The Grantee shall send annual notices to all Subscribers informing them that any complaints or inquiries not satisfactorily handled by the Grantee may be referred to the Town.

D. All notices identified in this Section shall be by either:

(1) A separate document included with a billing statement or included on the portion of the monthly bill that is to be retained by the Subscriber; or

(2) A separate electronic notification.

E. The Grantee shall provide reasonable notice to Subscribers of any pricing changes or additional changes (excluding sales discounts, new products or offers) and, subject to the forgoing, any changes in Cable Services, including channel line-ups. Such notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if within the control of the Grantee, and the Grantee shall provide a copy of the notice to the Town including how and where the notice was given to Subscribers.

F. The Grantee shall provide information to all Subscribers about each of the following items at the time of installation of Cable Services, annually to all Subscribers, at any time upon request, and, subject to Subsection 10.E., at least thirty (30) days prior to making significant changes in the information required by this Section if within the control of the Grantee:

- (1) Products and Cable Service offered;
 - (2) Prices and options for Cable Services and condition of subscription to Cable Services. Prices shall include those for Cable Service options, equipment rentals, program guides, installation, downgrades, late fees and other fees charged by the Grantee related to Cable Service;
 - (3) Installation and maintenance policies including, when applicable, information regarding the Subscriber's in-home wiring rights during the period Cable Service is being provided;
 - (4) Channel positions of Cable Services offered on the Cable System;
 - (5) Complaint procedures, including the name, address and telephone number of the Town, but with a notice advising the Subscriber to initially contact the Grantee about all complaints and questions;
 - (6) Procedures for requesting Cable Service credit;
 - (7) The availability of a parental control device;
 - (8) Grantee practices and procedures for protecting against invasion of privacy;
- and
- (9) The address and telephone number of the Grantee's office to which complaints may be reported.

A copy of all notices to Subscribers required by this Subsection 10.F. will be given to the Town as soon as possible.

G. Notices of changes in rates shall indicate the Cable Service new rates and old rates, if applicable.

H. Notices of changes of Cable Services and/or Channel locations shall include a description of the new Cable Service, the specific channel location, and the hours of operation of the Cable Service if the Cable Service is only offered on a part-time basis. In addition, should the channel location, hours of operation, or existence of other Cable Services be affected by the introduction of a new Cable Service, such information must be included in the notice.

I. Every notice of termination of Cable Service shall include the following information:

- (1) The name and address of the Subscriber whose account is delinquent;
- (2) The amount of the delinquency for all services billed;
- (3) The date by which payment is required in order to avoid termination of Cable Service; and,
- (4) The telephone number for the Grantee where the Subscriber can receive additional information about their account and discuss the pending termination.

7. Report of Christy Dunkle, Asst. Town Manager for Community Development

Ms. Dunkle noted two action items for setting public hearings. She said the first is for text amendments requested by Mr. Ding Wang and Mr. Echols in order to modify Article VI, Section 610 Business Commercial, of the Berryville Zoning Ordinance, deleting Section 610.2(u) retail stores and shops as an accessory use to the primary permitted use with provisions and establishing Section 610.2(x) "Personal service establishments, retail stores and shops not to exceed 10,000 [square] feet for each free-standing business or for each business in a shopping center or strip mall center." She said the Planning Commission held a public hearing in October and recommended denial of the text amendment. By consensus the Council set the public hearing for December 13.

Ms. Dunkle said A.C. Echols, Trustee, is requesting Proffer Amendments to revise Proffers approved August 9, 2009, in order to construct 120 multifamily units on the +/- 11 acre parcel identified as Tax Map Parcel number 14-5-251B zoned OPR Older Person Residential. She noted the agenda packet included the application, a 'Process to Consider' drafted by Mr. Robert Mitchell regarding the proffer amendment, and information submitted by the applicant. The Mayor and the Council discussed the amendment process and the notification of affected property owners. Recorder Arnold said it was strange that the proffer amendment came up after the text amendment was passed. Mayor Dickinson suggested a joint public hearing with the Planning Commission. Council member Kitselman said he was happy with Mr. Mitchell's recommendation of having only the Town Council hold a public hearing. Mr. Dalton added that according to Mr. Mitchell, the new laws effective July 1 were intended to address coercion by the jurisdiction, but that in this case, the applicant is clearly voluntarily requesting the proffer amendment. By consensus the Council set the public hearing for December 13.

8. Report of Keith Dalton, Town Manager

Mr. Dalton said he had received a letter from David Ash, Clarke County Administrator, requesting a joint meeting with the Town Council to discuss the status, recent actions, and future expectations for the Berryville Area Plan and the Berryville Area Development Authority. Mayor Dickinson said it would be helpful to know the areas of concern and topics for discussion in advance of the meeting. By consensus, the Council agreed to be available to meet on November 15 at 5:00 p.m., December 13 at 6:30 p.m., or December 20 at 5:00 p.m.

9. Report of H. Allen Kitselman, III – Berryville Area Development Authority Liaison

Council member Kitselman said the BADA had met and reviewed the Meridian assisted living project for the first time. He said they will meet again on November 30.

10. Report of Erecka Gibson - Chair, Budget and Finance Committee

The minutes of the October 13 and October 25 meetings were approved. Ms. Gibson said the Committee will meet on November 22 at 10:30 am.

Ms. Gibson moved that the Council of the Town of Berryville authorize the Assistant Town Manager for Finance and Administration to issue the attached Request for Proposals (Audit Services RFP # FIN 2017-001). She further moved that the Budget and Finance Committee and the Town Manager are authorized to review proposals and make award, with the Town Manager being authorized to execute necessary contracts and related documents. She further moved that the Town Council authorize a maximum expenditure of \$10,000 for this project and that the cost of this service be paid from

General Fund Contingencies. Mayor Dickinson said the motion originated in committee and did not require a second. Council member Tollett inquired whether the service is really necessary. Ms. Gibson said the audit services are necessary and will help the Town now and in the future. She said she did not expect the fees to reach the maximum amount with the scope of services being reduced.

Recorder Arnold said he respects Ms. Gibson's thoughts as a CPA and supports her motion, but he reminded the Council that the new members had criticized the previous Council for \$.04 tax increase to allow for a break even budget, and now the Council is spending contingency funds for this project.

Council member Kitselman said he respects her expertise and if she thinks the audit is worthwhile, he would support the idea.

The Council discussed the deliverable product expected from the audit.

The motion carried as follows:

Aye: McDonald, Kitselman, Gibson, Tollett, Arnold, Dickinson

Nay: None

Absent, Abstain: None

Ms. Gibson moved that the Council of the Town of Berryville release the hold that was placed on the following line items in the Fiscal Year 2017 Budget: Rescue Services Professional Services EMT \$50,000; and Parks and Recreation: \$5,000; and that the Treasurer is authorized to distribute these funds in accordance with her distribution schedule. Council member Tollett seconded the motion.

Recorder Arnold said the Town was involved in staff hiring for EMS going back as far as 1993 when only 36% of calls were in Town. He said now, with 74 % of calls in Town, it would seem the Town Council would owe more and not less toward EMS funding. He encouraged working with the Board of Supervisors to review costs, adding that the issue is not a new one. He thanked the Budget & Finance Committee for looking at the funding again. Recorder Arnold concluded saying that costs will continue to rise and that he would support spending to help the citizens of the Town.

The Council discussed the contribution to Parks and Recreation that was believed to have begun to help the County pay for swimming pool water. Council member Kitselman said the silver lining to the exercise is demonstrating how much the Town relies on its relationship with the County. He said perhaps the Town should find out how to help in situations where it is the generator of need. Ms. Gibson said that Town residents are also County residents and the question is how things should be funded. She said she appreciated the County Finance committee members helping bring the new Town Budget and Finance Committee up to speed. Council member Kitselman said souring the relationship between the Town and County has been a tactic used by some. Council member Gibson said souring the relationship was not her intention but that she thinks things should be black and white. She said she recognizes that the Town receives services from the County that it is not paying for, but it doesn't change her stance on who should be paying for it.

Recorder Arnold suggested in the future that Council communicate more with the Supervisors regarding issues that may affect the County. He said the Town's relationship with the County has always been close, adding that jumping to change things just to change them can have unintended consequences. Ms. Gibson said that her intention is to maintain the budget this year and allow the County to make changes next year.

Council member McDonald said she agreed with standing behind the budget as planned. She said she is disheartened to hear that the County thinks the Town does not want to work together, and looks forward to the joint meeting to learn more about the issue.

Council member Tollett said the funds were budgeted and need to be paid, not withheld.

Mayor Dickinson said she wanted to have this conversation. She said things need to be clearly defined such as who is responsible for paid staff. She noted areas where the County acted without town input, and said the Town has contributed nearly \$1,000,000 to EMS since 1993, adding that with 4000 residents now in Berryville, the costs since 1993 are about \$249 per person. Mayor Dickinson said paid staff is the responsibility of the County and she hopes the County and Town both understand why the Town contribution is unfair. She said Enders is facing significant challenges and she hopes the Town and County can work to help Enders address those challenges if invited to do so. She referenced Board of Supervisors' Chair David Weiss' letter asking the Town to honor its commitment and said she will support the motion to release the funds as budgeted.

Recorder Arnold said historically, the Town had not wanted the responsibility of hiring and managing a paid position and therefore assisted by making a monetary contribution to assist the County. He questioned the Mayor's example citing a million dollars over all the years since 1993 being divided over only the current population. Council member Kitselman pointed out that 74% of the calls are to the Town of Berryville. Mayor Dickinson said Berryville is the only place for aging County residents to go. Council member Kitselman noted that with additional senior housing units in Town that the number of calls will go up, and noted that most of the residents in the senior housing are not from Berryville. He said this goes back to how the County and the Town work together including planning, zoning, comprehensive plans, and said the community is unique in the state of Virginia. He said that what is being done is the poisoning of that working relationship.

Council member Gibson said we are all "County." She said she hopes to find a way to support Enders that is more black and white, and said she is not in favor of stopping support for Enders. She and Council member Kitselman agreed they are open to discussion of the issue. **The motion carried as follows:**

Aye: McDonald, Kitselman, Gibson, Tollett, Arnold, Dickinson

Nay: None

Absent, Abstain: None

11. Report of Donna McDonald - Chair, Community Improvements Committee

Council member McDonald said no meeting was held in October. She said the Town Forum that had been planned has been postponed, and added that the Committee will meet again after the first of the year.

12. Report of David Tollett – Planning Commission Liaison

Council member Tollett had nothing to report.

13. Report of David Tollett – Police and Security Committee

Council member Tollett said the Committee will resume code revision discussion and will meet on November 21 at 9:00 am.

14. Report of Patricia Dickinson – Chair, Streets and Utilities Committee

The minutes of the Committee meeting of October 25 were approved as presented.

15. Report of Patricia Dickinson – Chair, Personnel Committee

The minutes of the Committee meeting of October 24 were approved as presented.

The Personnel Committee moved that the Council of the Town of Berryville re-appoint H. Allen Kitselman to the Berryville Area Development Authority for a three year term beginning November 14, 2016 and ending on November 13, 2019. The motion carried as follows:

Aye: McDonald, Kitselman, Gibson, Tollett, Arnold, Dickinson

Nay: None

Absent, Abstain: None

There was discussion of committee motions not requiring a second before discussion and voting.

Council member Gibson moved that the Council of the Town of Berryville re-appoint Dale Barton to the Berryville Planning Commission for a four year term to begin November 13, 2016. Council member Kitselman seconded the motion which carried as follows:

Aye: McDonald, Kitselman, Gibson, Tollett, Arnold, Dickinson

Nay: None

Absent, Abstain: None

Council member Gibson moved that the Council of the Town of Berryville re-appoint Doug Shaffer to the Berryville Planning Commission for a four year term to begin November 13, 2016. Council member McDonald seconded the motion which carried as follows:

Aye: McDonald, Kitselman, Gibson, Tollett, Arnold, Dickinson

Nay: None

Absent, Abstain: None

Council member Gibson moved that the Council of the Town of Berryville recommend the following to the Clarke County Circuit Court: Appointment of Wilson Kirby to the Town of Berryville Board of Zoning Appeals to fill an unexpired term ending June 12, 2017, with such term commencing upon approval by the Court. Council member Tollett seconded the motion which carried as follows:

Aye: McDonald, Kitselman, Gibson, Tollett, Arnold, Dickinson

Nay: None

Absent, Abstain: None

16. Other

Council member McDonald said that at the work session Recorder Arnold had requested to be appointed to the Budget and Finance Committee, and inquired whether a motion had been prepared. Recorder Arnold said that he had prepared a motion. The Mayor said as a point of order, the matter was not part of the agenda when approved and added that committee membership is not appointed by the Council, but by the Mayor according to the Town Code. She said this is an illegal motion.

Recorder Arnold said that he has no report on the agenda, and therefore the only place for him to address the matter is under "other." He said the matter had been discussed at the previous work session. He said that Council member Gibson had recently resigned as Chair of the Personnel

Committee, adding that he is pleased to serve on that Committee with both Council member Gibson and the Mayor. He asked to be named Chair of the Committee.

The Mayor said a motion cannot be made in direct conflict with Town Code. Recorder Arnold asked the Council to look at the motion before ruling on it, assuring the body that the motion is not illegal. He said he would like to be Chair of the Personnel Committee as all other members of the Council hold such a position. Mayor Dickinson said she would be happy to have the conversation with Recorder Arnold but not in a public meeting. She said she would make an exception and allow the motion to come forward. Recorder Arnold said the item had been discussed at the work session and was not a surprise. He noted that he could not meet with the Mayor privately as it would constitute an illegal meeting and therefore would have to be discussed in a public meeting. He said to be transparent, it was important to discuss the appointments in an open meeting.

Council member McDonald said the Personnel Committee recommends to the Berryville Town Council appointments to various boards and commissions. She said Council member Gibson recently resigned as Chair of the Committee, and each Council member is currently assigned as Chair of a Committee. **Council member McDonald moved that the Council of the Town of Berryville request that the Mayor appoint Harry Lee Arnold, Jr., a current member of the Personnel Committee, as Chairman. Council member Kitselman seconded the motion.** Council member Gibson asked staff for input on options for the appointment of committees. Mr. Dalton said the Code provides for the Mayor to make the appointments and added that this motion asks for a recommendation from the Council. Council member Gibson clarified that the Mayor has sole authority to make appointments. Council member McDonald said the motion clearly says 'requests the Mayor to make the appointment.' **The motion carried as follows:**

Aye: McDonald, Kitselman, Gibson, Tollett, Arnold
Nay: Dickinson
Absent, Abstain: None

Recorder Arnold said that in the future, perhaps a Recorder's report should be added to the agenda and the Mayor agreed.

Council member Kitselman said that the Budget and Finance Committee has the responsibility to assist in the formation and review of the budget and the finances of the Town. He said as other committees have three members, the Budget and Finance Committee could also benefit by having three members. **Council member Kitselman moved that the Council of the Town of Berryville request that the Mayor appoint Harry Lee Arnold, Jr., Town Recorder, to the Budget and Finance Committee. Council member Gibson seconded the motion.** She added she is not opposed to having Mr. Arnold as a member of the Committee. **The motion carried as follows:**

Aye: McDonald, Kitselman, Gibson, Tollett, Arnold
Nay: Dickinson
Absent, Abstain: None

Council member Kitselman suggested that the Town Code regarding appointment of standing committees be amended at the next meeting.

Recorder Arnold said the Economic Development Advisory Committee had also been discussed at the work session. He said the County and the Town have a Memorandum of Understanding regarding economic development, and that the Town is not big enough to take on economic development on its

own. He said the Town needs the resources of an economic development director and is already working with the County. He added that the MOU includes a mechanism for funding through the Occupancy Tax. He said the current setup is working and Council Committees are already taxed with workload. **Recorder Arnold moved that the Council of the Town of Berryville repeal the Economic Development Advisory Committee as a committee of the Berryville Town Council. Council member Kitselman seconded the motion.**

The Mayor said the procedure for adding motions to the agenda is to contact Mr. Dalton with information about the item for the agenda packet. She asked that the Council not address the motion until next month allowing the members to better understand what is being voted on. Recorder Arnold inquired whether a motion and second were already on the table. The Mayor moved that the motion be tabled, saying the matter was a surprise since it was not on the agenda.

Recorder Arnold said the issue was not a surprise since it was discussed in the work session, and that he had no place on the agenda to put things. The Mayor said she would have to refer the matter to a point of order and get legal counsel on whether the motion was legal. Recorder Arnold asked that the decision of the Chair be sustained meaning the Council could overrule the Chair. The Mayor said the issue was underhanded and that Recorder Arnold did not follow the process. He again asked that the decision of the Chair be sustained, and Council member Kitselman agreed.

Council member McDonald asked for clarification saying that she understood that motions could be made by the members on an appropriate topic if it arose. The Mayor said that items need to be added to the agenda at the time the agenda is approved. Recorder Arnold said that he had notified the Mayor at the work session that the topic would be brought up. Recorder Arnold called for the question.

Mayor Dickinson said the Town Council committee is nothing like the County committee. She said it does not contact business or bring businesses in to Berryville. She said it is a group of people that will come in and look at our Town and make recommendations to the Planning Commission and Town Council about what they think are good options for the community. She said it has no relationship to the County committee and is one more place to get new information and ideas. She said she did not see how it could hurt unless it hurt some individual business owners' sense of competition.

Council member Kitselman said the idea, right from the playbook of a certain developer the Town has been dealing with for 30 years, is to stack the committee with people who support your agenda. He said the committee members proposed by the Mayor advocate no zoning. He said the committee is a political idea, and suggested that supporters of such an agenda should step forward and own the agenda. Recorder Arnold said he had been against the committee when it was first proposed.

Council member Gibson inquired whether any new talent bank forms had been submitted following the announcement of the committee. Mr. Dalton said one new form had been received, but he was not sure if it had specified any particular committee. Council member Gibson asked what power if any the committee would have. The Mayor said not knowing the item would be on the agenda, she did not bring her materials with her, but she said the committee was advisory and would make recommendations in an advisory role on the types of businesses the Town might want to attract, and the zoning and whether it would inhibit or prohibit businesses. Council member Gibson clarified saying that if the committee is advisory and no one takes the advice, then nothing changes. The Mayor agreed, and said the committee would have no decision making authority and would not go out and contact businesses.

Council member McDonald inquired whether the Economic Development Advisory Committee could be folded into the Community Improvements Committee since her understanding of the roles of the two committees seemed very similar. The Mayor said she did not envision the committee addressing any one committee and having another viewpoint would help. Recorder Arnold called for the question.

The Mayor restated the motion. **The motion carried on the following vote:**

Aye: McDonald, Kitselman, Tollett, Arnold

Nay: Gibson, Dickinson

Absent, Abstain: None

Recorder Arnold noted the Town Administration Policy Committee and said policies have always been reviewed by the Council and should be reviewed by the current committee, saying for example, personnel policies are reviewed by the Personnel Committee, and police department policies by the Police and Security Committee. He said the new committee is a duplication of services. **Recorder Arnold moved that the Council of the Town of Berryville repeal the Town Administration Policy Committee. Council member Kitselman seconded the motion.**

Mayor Dickinson inquired whether the Clerk had notes regarding the 'aye' and 'nay' votes when the matter was initially brought to Council. The Clerk responded that she did not have the notes with her, but the action had been taken at the July meeting. The Mayor said that one who voted no on a motion is not allowed to bring the motion back for reconsideration. Recorder Arnold said the Council was not changing the motion that was previously approved, it was repealing the committee. Mayor Dickinson asked if there were a second to the motion. **Council member Kitselman had already seconded the motion which carried as follows:**

Aye: McDonald, Kitselman, Tollett, Arnold


Nay: Gibson, Dickinson

Absent, Abstain: None

Recorder Arnold noted the policy for recording the meetings. He said the Mayor is in violation of the policy by requesting copies of the recordings prior to destruction of the recordings. Mayor Dickinson said she would seek Mr. Mitchell's opinion on the matter. Council member Kitselman said that in order to initiate a request for Mr. Mitchell's services, a consensus of Council was needed. Recorder Arnold suggested studying the matter for 30 days. The Council discussed the issue of recordings as records. Mr. Dalton said the Council had determined that the recordings would not become permanent records unless it were deemed historical.

17. Adjourn

There being no other business, upon motion of Council member McDonald, seconded by Council member Tollett, the meeting was adjourned at 9:18 p.m.



Harry Lee Arnold, Jr., Recorder



Ann W. Phillips, Town Clerk

MINUTES
BERRYVILLE TOWN COUNCIL
POLICE AND SECURITY COMMITTEE
Berryville-Clarke County Government Center
Regular Meeting
Monday, November 21, 2016
9:00 a.m.

Committee members: Present- Dave Tollett, Chair; Absent- Donna McDonald

Staff: Keith Dalton, Town Manager; Neal White, Chief of Police; Ann Phillips, Town Clerk

Others: Patricia Dickinson

Press: Cathy Kuehner, Winchester Star

1. Call to Order

The meeting was called to order at 9:00 a.m. by Committee Chair Tollett.

2. Report of the Chief

Chief White reported that he is in the process of interviewing to fill a current opening on the staff. He said a new academy term begins in January and added that if a non-certified person is hired, he hopes the new employee will attend the January academy session.

Chief White said he is attending monthly meetings regarding the new Skyline Academy. He said Shockey Company will be breaking ground next week, and the building has a planned opening date if July 1, 2017.

3. Ordinance Revisions - Chapter 8 (Garbage and Refuse)

Chief White noted that he and Mr. Dalton have been working on revisions for several months. Mr. Dalton suggested addressing the specific areas of service by having a policy outside the ordinance. He said as Town Manager, he could identify and monitor the commercial district service area. He and Chief White agreed that this approach would be the best option and would simplify both the revision and management of the policy.

There was discussion of how dumpsters are monitored. Mr. Dalton said the location and screening of dumpsters is addressed under zoning, and if a site is covered by a site plan then the issue is specifically addressed at that point. He said the care and dumping of dumpsters is covered by this ordinance.

There was discussion of punishments for violations of Chapter 8 (Garbage and Refuse).

Ms. Dickinson suggested that in the future, citizens be charged for additional trash toters, but not for additional recycling bins.

Mr. Dalton proposed that the ordinance be sent to the town attorney, Mr. Mitchell, for review. He suggested that pending Mr. Mitchell's review, the ordinance and the policy could be on the agenda at the February 2017 Town Council meeting. By consensus, the Committee agreed to that schedule.

Chief White said the next chapter scheduled for review is Chapter 10 – Motor Vehicles. He said he will provide a synopsis of the status of revisions thus far.

4. Other

Mr. Dalton noted the upcoming retirement of the Police Department Administrative Assistant. He said the position is being changed to provide support in the Town business office 25% of the work week.

The committee discussed e-citation software. Chief White said Clarke County will implement the system in December, and he will observe the process.

5. Adjourn

There being no further business, the meeting was adjourned at 9:45 a.m. on a motion by Ms. Dickinson, seconded by Mr. Tollett, and passed unanimously.

MINUTES
BERRYVILLE TOWN COUNCIL
BUDGET AND FINANCE COMMITTEE
Berryville-Clarke County Government Center
Regular Meeting
November 22, 2016
10:30 a.m.

Committee members: Present- Erecka Gibson, Chair; Patricia Dickinson

Staff: Keith Dalton, Town Manager; Dave Tyrrell, Director of Utilities; Ann Phillips, Town Clerk

Others: Harry Lee Arnold Jr.; Alton Echols; Brian McClemens; Marilyn Pierce

Press: Cathy Kuehner, Winchester Star

1. Call to Order

Chair Gibson called the meeting to order at 10:30 a.m.

2. Discussion – Wastewater Treatment Plant Membrane Pre-Purchase

Mr. Tyrrell recapped the issue saying with the inevitable need to replace the membranes, the pre-purchase plan in conjunction with GE allows the Town to lock in lower costs. He continued saying that the pre-purchase arrangement allows labor and programming to be obtained at today's rates, meaning a savings of \$167,000 over market rates. He explained additional upgrades, including the LEAPmbr system, planned in conjunction with the pre-purchase agreement. Mr. Tyrrell said the pre-purchase agreement requires the first annual payment of \$90,000 to be made in January 2017. He said if the Town does not opt to take advantage of the pre-purchase, there will no longer be a price guarantee and market price will apply when the membrane is replaced.

Ms. Gibson asked if there are any disadvantages to the pre-purchase. Mr. Tyrrell said the only disadvantage is the Town is in the middle of a budget cycle and would have to reallocate the necessary funds. He added that the plan would allow technology to automatically advance, so the Town would not be locked in to old technology.

Ms. Gibson asked what the plan had been in the past to address the issue. Mr. Dalton highlighted the history of the topic, explained that the Council had been saving for the purchase, and said the Council has funds in reserve. He said the Council could pass a budget amendment to address the January 2017 payment and add a line item under Utilities.

There was discussion of how the payments will be funded and the status of availability fees. Ms. Dickinson said she would like an additional report on the project and listed the topics she would like to see on the report. The committee discussed the options of whether to put money away, or not to save money and then paying the market price later.

Ms. Gibson asked about the timing of the payment, and Mr. Tyrrell said that GE would need to invoice the Town in January. By consensus, the Committee agreed to add the topic to the December agenda unless it is determined by Mr. Tyrrell that the matter could be decided at the January 10, 2017, meeting.

3. Discussion – Mapping of Internal Controls

The Committee and Mr. Dalton discussed the RFP due date. There was discussion of the job positions affected by the retirement of the current Police Dept. – Admin employee. Mr. Dalton said the plan is to shift some duties to the Police Dept. – Admin. Position from the Town business office, adding that duties of the Front Desk Clerk and the Town Clerk would be adjusted also. He said the goal is to add eight hours per week of staff time to support the Treasurer. He said he and Chief White agree that the current sworn staff are more independent with their paperwork, and the time is right to flex this position to assist in the business office. He added Police Department may begin using E-citation, which will reduce internal paperwork even more. Mr. Dalton said his concern has been to finalize these job descriptions before the controls are mapped. Regarding the RFP, Mr. Dalton invited Committee members to send their suggestions for review criteria and weighting to Desi in preparation for reviewing the proposals.

4. Discussion – Budget Analysis / Variance Report

The Committee discussed the guidelines provided to the Treasurer by Ms. Gibson. The Committee discussed the first report prepared by the Treasurer and noted that it contained more explanations than necessary. The Committee members decided they will work with the Treasurer to streamline the report. Ms. Gibson provided a list of changes, guidance, and sample variance descriptions. Ms. Dickinson suggested that if a variance is expected to remain throughout the budget year, it should be so noted. Ms. Gibson said that, overall, she liked how the Treasurer had organized the reports. Ms. Dickinson also suggested an explanation of contingency funds moved in the Cash Disbursement report.

5. Adjourn

The committee adjourned at 11:24 a.m.